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## **WIN IN *O'DONNABHAIN* TAX COURT CASE: GID QUALIFIES AS MEDICAL CARE**

*(Updated February 12, 2010)*

GLAD has great news for transgender people who can benefit from claiming a medical deduction for the treatment of GID. On February 2, 2010, the U.S. Tax Court issued a ruling in *O'Donnabhain v. Commissioner of Internal Revenue* that treatment for gender identity disorder (GID) qualifies as medical care under Section 213 of the Internal Revenue Code, and, therefore, provided there is adequate medical documentation, related expenses (e.g. hormones, surgery, therapy and other expenses related to the treatment of GID that satisfy the requirements of Section 213 of the Internal Revenue Code) qualify for a medical deduction for federal income tax purposes. (To see the decision go to: <http://www.ustaxcourt.gov/InOpHistoric/ODonnabhain.TC.WPD.pdf>)

This is a very strong decision, recognizing the legitimacy of GID as a medical condition and, therefore, that expenses related to the treatment of GID may be deductible. We do not yet know whether this decision is final. After the final judgment is entered, the Internal Revenue Service (IRS) has 90 days to appeal to the United States Court of Appeals for the First Circuit. So it may be a while before we know whether the IRS will appeal the decision.

In the meantime, if you have had treatment for GID and are trying to decide whether you should claim related expenses as a medical deduction, here is some information that may help you to decide. We are, however, not able to provide specific legal advice, so we strongly recommend that you take this information to a tax expert—a CPA or tax attorney—who can assist you in making your decision.

Once our win in the *O'Donnabhain* case is finalized, it should make it easier for transgender people, who claim a medical deduction for expenses related to the treatment of GID, to win a challenge to that deduction by the IRS. However, our win does not guarantee that every medical deduction for the treatment of GID will be allowed by the IRS. Medical deductions can always be audited and require that you have strong documentation from your care providers that the treatment is medically appropriate. In the *O'Donnabhain* decision, the judges relied heavily on the *WPATH Standards of Care* in determining whether specific treatments were appropriate.

In our case, although most of the medical treatment Rhiannon O'Donnabhain received for GID was allowed, her breast surgery was not. The Court felt that she had obtained “normal” breasts through hormone treatment and concluded that there was insufficient documentation by the doctors that this procedure was needed for the treatment of Rhiannon’s GID. However, this does not preclude you from claiming breast surgery as a medical deduction for the treatment of your GID. The bottom line is to make sure that you have the strongest medical documentation possible for each part of the treatment for which you are claiming a medical deduction. If you are audited and your medical deduction is denied, you can pursue the same course Rhiannon did—file an appeal, and, if you lose the appeal, file in tax court.

With regard to medical expenses for the treatment of GID incurred in previous tax years, the IRS allows you to file an amended return for up to three years from the date of your original filing. If you are close to that point, you might consider filing an amended return before the deadline is passed even before our case is final. If the three year time limit has passed, you cannot file an amended return. If you are not close to that deadline, you might want to see whether our case is appealed before filing. Again, you should consult a tax expert about the best course of action.

If you have any questions about this, please **contact GLAD’s Legal InfoLine at 800-455-GLAD (4523)**. If you live in any of the six New England states, GLAD can also provide you with referrals to tax attorneys.